

REMARKS

The purpose of this Amendment is to respond to the objections and rejections set forth by the Examiner in the Office Action mailed January 25, 2005. The present Amendment is being submitted along with a request for a two-month extension of time and the appropriate small entity fee.

The Abstract of the Disclosure was objected to as being too long, and for not beginning with the phrase "A shopping cart including a wheeled base having..." By this paper, applicants have requested that a shortened, replacement, Abstract of the Disclosure be substituted for the original Abstract to which the objection was made. Applicants are attaching a page entitled "ABSTRACT CORRECTIONS" so that the Examiner and his supporting staff can ascertain the changes that were made to the originally submitted ABSTRACT OF THE DISCLOSURE to yield the newly submitted, "replacement" ABSTRACT OF THE DISCLOSURE presented above.

Objection to the drawings was made on the basis that "the character of the lines, numbers and letters are not uniformly thick, well-defined, neat, see 37 CFR 1.84(L)".

Applicants are submitting herewith REPLACEMENT DRAWINGS that have been prepared to repair the stated deficiencies.

The Examiner also objected to the drawings on the basis that Figure 5 did not show the "transverse member 262" as identified on page 6 of the specification of the present application.

The Examiner correctly surmised that the transverse member is element 292, and an appropriate correction to the last line of page 6 of the specification has been requested.

Claims 2-21 have been rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 2 and 3, the Examiner contends that "said basket" in line 1 of the claims is without antecedent basis. While such was seen to be true of claim 3, claim 2 was seen to recite "a basket" in line 2 and thus was unfairly grouped with claim 3. Applicants have amended claim 3 to be dependent on claim 2, and that should fix the problem complained of.

With regard to claims 7 and 8, applicants have amended claims 7 and 8 so that they are now dependent from claim 3, thereby eliminating any lack of antecedent basis. As for claim 9, it is (and originally was) dependent on claim 8 and with the change of dependency of claim 8 it no longer suffers from lack of antecedent basis.

With regard to claims 11 and 15-21, the Examiner states that "The limitation, 'of conventional shopping carts; is not of proper scope as a "conventional shopping cart" has not been positively recited leaving it unclear and indefinite as to which is encompassed by the comparison with the claimed shopping cart and the 'conventional shopping cart'".

Applicants believe this rejection is without foundation. First, the specification clearly defines a "conventional shopping cart" with not only drawing figures but also a detailed description of such "conventional shopping cart". Secondly, as of June 22, 2005, a search of the issued US patents revealed that the US Patent and Trademark

Office has issued 20163 patents in which one or more claims in each of the patents contains the word “conventional”. And thirdly, there are several US patents that have issued pertaining specifically to shopping carts and containing claims in which “conventional shopping carts” have been recited, as for example, claim 9 in US Patent No. 4,120,384 to Choy, claim 1 in US Patent No. 5,441,285 to Russell, Jr. et al, and claim 5 in US Patent No. 5,961,133 to Perry. The patent to Perry is particularly noteworthy inasmuch as it recites a comparison of a structural feature on the inventive cart with similar structural features on “conventional shopping carts”.

Surely it cannot be that the US Patent and Trademark Office has issued 20163 invalid patents – that is, patents that are invalid because they contain claims that recite “conventional” structure and are therefore indefinite. Put another way, applicants are perplexed as to why their claims 11 and 15-21 that recited “conventional” structure, namely “conventional shopping carts”, are being viewed as indefinite, while 20163 other applications previously examined by the US PTO have passed the test of 35 USC 112, second paragraph, and matured into Letters Patent, even though they too contain claims reciting “conventional” structures -- including the three US patents identified above specifically pertaining to shopping carts.

In view of the foregoing explanation, applicants respectfully request reconsideration and withdrawal of the rejection of claims 11 and 15-21 under 35 USC 112, second paragraph, as being indefinite.

Claims 1 and 2-15, 21 and 22 have been rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,507,507 to Davidson. The Examiner asserts that Davidson teaches a shopping cart 10 including a wheeled base 22,24,14, a container 18B supported by the base, a pedestal 36 formed on the base for supporting a

container thereon, the pedestal being secured to the base at a location between the forward and rearward ends of the base, the container being supported on the rear of the table portion (of the) pedestal so that the rear of the container is disposed forwardly of the rear of the base. The Examiner further urges that Figure 2 of Davidson shows the pedestal having a slight inclination where the front of the pedestal is higher than the rear, a handle member 66 located a substantial distance upward from the basket 18b that is part of the container, two rods 26 connecting to a forward attachment of the handle and to the pedestal, and two rods 32 for connecting a rearward attachment of the handle to the base. Further according to the Examiner, Davidson further teaches two hinge rods 62 for pivoting of a rear gate, and a child seat (shown in Figure 6) that can be attached to the rear of the basket.

Applicants respectfully solicit reconsideration and withdrawal of this rejection for the following reasons.

Davidson does indeed show a shopping cart bearing several baskets attached to a wheeled base. However, there are many differences between the Davidson cart and the applicants' cart. For one thing, the shopping cart of Davidson is not a cart with a lowered center of gravity – the (tip-over) stability of the cart is compromised by the inclusion of a handle member 34 of great enough height to accommodate an upper basket 18a positioned atop the basket 18b. In the Davidson cart, there are no hinge rods attached to the handle member 66 from which rear gates for the baskets can be pivotably supported. In the Davidson cart, the space between the lower basket and the wheeled base is not of a size that effectively eliminates the storage or placement of articles on the wheeled base.

Further, the Davidson patent fails to disclose or teach " a gate member pivotably attached to a portion of said base rearwardly of said container and functionally arranged therewith to act as a closure for the rear of said container", for although there is disclosed a pivoting rear wall 58 that pivots into the interior of the basket 18a or 18b, such rear wall is an integral part of the basket and not the base, and pivoting of the rear wall is accomplished relative to the basket itself, not relative to the base, since the rear wall is not attached to the base.

With respect to claims 15-22, Davidson fails to disclose or teach "a pedestal being mounted to said base at a location between the forward and rearward ends of said base and at a height relative to said base such that the space between the pedestal and the base is minimized to such an extent that its use as storage for merchandise has effectively been eliminated".

Finally, in the Davidson patent, the child seat disclosed is associated with the uppermost basket 18a only, and for good reason since (1) if the child seat were part of the lower basket 18b, the container situated on the wheeled base below the basket 18b would be rendered useless as it would most likely contain the child's legs, and (2) if the child seat were part of the lower basket 18b, it would be nearly impossible for a typical shopper to attend to the child's needs without first kneeling down on the ground.

New claim 23 presented above states that the shopping cart further includes a horizontal rod mounted at a rear portion of the wheeled base for pivotably supporting a gate member at the rear of the container. The Davidson patent fails to disclose or teach this clearly recited structure, and thus claim 23 should be allowed along with the remaining claims.

The remaining references cited but not applied have been reviewed, but none are thought to be any more relevant than the Davidson patent applied against the claims by the Examiner.

For all the foregoing reasons, applicants respectfully request reconsideration and withdrawal of the objections and rejections imposed by the Office Action mailed January 25, 2005, and allowance of the claims currently pending in this application.

Respectfully submitted on behalf of applicants,

A handwritten signature in black ink, reading "Terrell P. Lewis". The signature is written in a cursive, flowing style.

Terrell P. Lewis
Registration No. 29,227

343 Palos Verdes Boulevard
Unit #8
Redondo Beach, CA 90277
(310) 465-0500

IN THE DRAWINGS

Applicants are submitting herewith corrected drawing sheets, each one of which has been labeled "Replacement Sheet" in the page header, and respectfully request that the Examiner review and approve said Replacement Sheets for entry into this application.